HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.8327 OF 2007

Between:

Syed Kareem

…Petitioner

AND

The Municipal Commissioner,
Municipal Corporation of Hyderabad,
Hyderabad and three others

...Respondents

: O R D E R :

Counsel for the petitioner : Shri Mohammad Yousufuddin

20th April, 2007

Per G.S.SINGHVI, CJ

In this petition, the petitioner has prayed for issue of a mandamus to respondent Nos.1 to 3 to take action for demolition of the illegal/unauthorised construction made by respondent No.4 in house bearing MCH No.9-4-131/1/B/212 situated at Nadeem Colony, Hyderabad.

The petitioner's sister Smt. Asma Sulthana is said to have purchased the plot in question from Mrs. Farhathunnisa Begum through notarised agreement of sale dated 7-8-1997 and he claims to have acquired the same pursuant to registered gift settlement deed dated 5-8-2006 executed by his sister. After execution of gift settlement deed, the petitioner filed suit for perpetual injunction against one Zeeshan Ali Khan in the Court of IX Junior Civil Judge, City Civil Court, Hyderabad. The same was decreed on 12-12-2006.

In the affidavit filed by him, the petitioner has averred that by taking advantage of his absence, respondent No.4 encroached the plot in question and started construction in the guise of the order of injunction passed by the trial court in I.A.No.32 of 2007 in O.S.No.282 of 2007. His grievance is that even though he made representations dated 27-2-2007 and 2-4-2007 to the authorities of the Municipal Corporation of Hyderabad to remove the illegal construction made by respondent No.4, the concerned authorities have not taken any action in the matter.

We have heard Shri Mohammad Yousufuddin, learned counsel for the petitioner and perused the record. In our opinion, the writ petition is liable to be dismissed because,

i) the petitioner has not produced any tangible evidence to

support his averment in the affidavit that respondent No.4 has encroached the plot in question and is raising construction;

ii) in paragraph 3 of his affidavit, the petitioner has referred to decree dated 12-12-2006 passed by the trial court in the suit for perpetual injunction filed by him against Shri Zeeshan Ali Khan, but the copies of the plaint and decree have not been placed on record so as to enable this Court to consider the impact of the decree on the alleged construction being done by respondent No.4, and

iii) as per the petitioner's own showing, respondent No.4 has filed O.S.No.282 of 2007 along with I.A.No.32 of 2007 and the trial court has passed order of injunction dated 25-1-2007. During the subsistence of the injunction, this Court cannot issue a mandamus to respondent Nos.1 to 3 to demolish the disputed construction. Any such direction by this Court would encourage the litigants like the petitioner and the official respondents to take law into their own hands and undertake demolition of the property in complete disregard of the judicial order.

For the reasons mentioned above, the writ petition is dismissed with liberty to the petitioner to get himself impleaded as a party to O.S.No.282 of 2007 and I.A.No.32 of 2007, if he has already not been impleaded as party to those proceedings. If the petitioner is a defendant in the suit and I.A. filed by respondent No.4, then he shall be free to apply for vacating the order of temporary injunction. If he is already not a party and the trial court accepts his impleadment as party defendant, then also the petitioner shall be free to seek vacation of the ad-interim order and avail other appropriate legal remedies.

However, it is made clear that this order shall not be construed as a mandate of the High Court for impleadment of the petitioner as a party to the suit filed by respondent No.4 or for vacating the interim injunction.

As a sequel to dismissal of the writ petition, WPMP No.10682 of 2007 filed by the petitioner for interim relief is disposed of as infructuous.

G.S. SINGHVI, C.J.

C.V. NAGARJUNA REDDY, J.

20th April, 2007

svs